

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

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STEPHEN D. CAIAZZO,  
Plaintiff

v.

THE MEDALLION INSURANCE  
AGENCIES, INC.,  
Defendant

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CIVIL ACTION NO.  
04-12627 RCL

**PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO STRIKE**

The defendant, Medallion Insurance Agencies, Inc. ("Medallion") has filed a motion to strike the Affidavit of the plaintiff, Stephen Caiazzo, dated September 26, 2006 and the exhibits attached thereto as Exhibit A and Exhibit B, which were filed along with plaintiff's motion for relief from judgment on his claim for personal property. The plaintiff Stephen D. Caiazzo ("Caiazzo") hereby opposes Medallion's motion to strike.

Medallion claims that the Affidavit and Exhibits contain new, previously undisclosed information which is at odds with the summary judgment record.

The date of loss was not addressed in Medallion's summary judgment materials and did not arise until oral argument on Medallion's motion for summary judgment. Caiazzo could not have anticipated that he would need to establish the date of loss for summary judgment purposes. As set forth in Caiazzo's memorandum in support of his motion for relief from summary judgment, the exhibits attached to his Affidavit establish the date of loss of his personal property. The two exhibits attached to Caiazzo's affidavit were exhibits at the trial of case against a bank

and a real estate company in which he recovered for part of his property loss. These documents were produced by those defendants shortly before the trial in December 2005. These documents were not relevant to this case and were not produced until defense counsel misstated the date of loss.

Of more importance is the date Caiazzo learned of his property loss, which was in February 2002 according to his Affidavit. Caiazzo's deposition testimony was that he was not sure of the dates, but recalled recovering some of his property in October 2001 and learning of the loss in November 2001 (Medallion's Exhibit 1B, pp. 193, 197) is not prior inconsistent testimony since Caiazzo said he did not recall the exact dates and testified only to the best of his memory. Thus, Exhibits A and B, attached to Caiazzo's Affidavit, are not inconsistent with his deposition testimony.

In Medallion's opposition to plaintiff's motion for relief from judgment, Medallion claims that Caiazzo removed the property he had purchased from the bankruptcy trustee to a bar known as the Blue Parrot, where the owner misappropriated the property. This is a misstatement of Caiazzo's deposition testimony. At his deposition, Caiazzo testified that he brought some, but not all, of the property he purchased from the bankruptcy trustee to the Blue Parrot. (Medallion's SJ Exhibit 1A, pp. 7-11; SJ Exhibit 3B, p. 107). Thus, Caiazzo's current claim for this part of his property loss is for the property he purchased from the trustee which he did not bring to the Blue Parrot. Medallion's attempt to assert that Caiazzo bought all of this property to the Blue Parrot is not supported by the summary judgment record and is only another attempt by Medallion to misrepresent Caiazzo's deposition testimony.

Thus, Caiazzo's Affidavit and the two exhibits attached thereto are not new evidence which is at odds with the summary judgment record.

WHEREFORE, plaintiff requests this Court to deny defendant's motion to strike.

By Plaintiff's Attorney,

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Dated: October 17, 2006

CERTIFICATE OF SERVICE

I, Dean Carnahan, hereby certify that on this day this document(s) filed through the ECF system will be sent electronically to the registered participants on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

Date: October 17, 2006

/s/ Dean Carnahan  
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DEAN CARNAHAN

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